

Exhibit 12

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.
Local Rule 56.1 Statement of Undisputed Material Facts
in Support of Their Motion For Summary Judgment

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL) MDL No. 1456
INDUSTRY AVERAGE WHOLESALE) Civil Action No.
PRICE LITIGATION) 01-12257-PBS
_____)

THIS DOCUMENT RELATES TO:)
United States of America,)
et al. v. Ven-a-Care of the)
Florida Keys, Inc. v.)
Boehringer Ingelheim Corp.,)
et al., CIVIL ACTION NO.)
07-10248-PBS)

- - -

Videotaped deposition of ROBERT C.
SYKORA, taken pursuant to the stipulations
agreed to herein, before Suzanne Beasley,
Registered Professional Reporter and Notary
Public, at 1031 Virginia Avenue, Atlanta,
Georgia, on the 4th day of December, 2008,
commencing at the hour of 10:38 a.m.

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1 Q. Well, I'll come at it from a slightly
2 different angle.

3 Were you ever disciplined for taking
4 any unauthorized action when you were director of
5 national accounts?

6 A. Not that I'm aware of.

7 Q. Do you believe that all of the actions
8 that you performed as director of national
9 accounts were within the course and scope of your
10 employment for Boehringer Ingelheim?

11 A. Within the scope of Roxane
12 Laboratories, yes.

13 Q. Why do you say Roxane Laboratories?

14 A. Because during this particular time
15 period I had very little interaction with
16 Boehringer Ingelheim. There was a kind of an
17 indirect reporting relationship between Roxane
18 and Boehringer, but we ran as a completely
19 standalone company.

20 Q. Well, you agreed just a few minutes
21 ago, didn't you, sir, that you were employed by
22 Boehringer Ingelheim when you were the director

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1 of national accounts, correct?

2 A. My paycheck said Boehringer Ingelheim,
3 but all of the interactions were with Roxane.

4 Q. All right. Who did you believe was
5 your employer?

6 A. Roxane.

7 MR. KAVANAUGH: Objection to form.
8 Go ahead. You can answer.

9 THE WITNESS: Roxane Laboratories.

10 BY MR. ANDERSON:

11 Q. What gave you that impression?

12 A. I was on the Roxane campus. The
13 building on -- the sign on the front of the
14 building where I worked said "Roxane Sales and
15 Marketing." I reported in to Rich Feldman, who
16 was a Roxane employee. He reported in to Ed
17 Tupa, who was a Roxane employee. When a decision
18 was made, it was Roxane employees that were
19 making the decision.

20 Q. Well, we'll get into some documents
21 later, but you recall that you sold BI products,
22 didn't you?

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1 any state Medicaid program that they were going
2 to raise the AWP's about triple or quadruple on
3 Furosemide to better sell Furosemide?

4 A. I do not know that.

5 (Exhibit Sykora 007 was marked for
6 identification.)

7 BY MR. ANDERSON:

8 Q. Now, if you could, Mr. Sykora, take a
9 look at what's been marked as Exhibit 007. For
10 the record, it's also been marked as Exhibit 063
11 in the Lesli Paoletti November 10th, 2004
12 deposition.

13 Have you had a chance to review Exhibit
14 007?

15 A. I have, sir.

16 Q. Do you agree that the underlying
17 message from you to Judy, Rich Feldman and Tom
18 Russillo dated July 7th, 2000 around 2:25 p.m. is
19 the same in both e-mails?

20 A. A majority of it is the same in Exhibit
21 006 and 007.

22 Q. Right. And the difference is that in

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1 Exhibit 007, Mr. Russillo has provided a response
2 to your message, and in Exhibit 006, Judy Waterer
3 was providing a response to your message,
4 correct?

5 A. Correct.

6 Q. And Mr. Russillo writes, quote, Bob, I
7 assure you it's real. To get the approval we
8 need from C-O-N-N period though we need some hard
9 info.

10 Did I read that correctly?

11 A. You did.

12 Q. Do you believe that that C-O-N-N
13 reference is Connecticut?

14 A. I would believe it would be.

15 Q. And Boehringer Ingelheim is based in
16 Connecticut, correct?

17 A. That is correct.

18 Q. So is it fair to say that's a reference
19 to Boehringer Ingelheim?

20 A. Or some individual from Boehringer
21 Ingelheim located in Connecticut.

22 Q. Why would Boehringer Ingelheim be

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1 my primary functions at Roxane.

2 BY MR. ANDERSON:

3 Q. Oh. Just managing the national sales
4 force and helping facilitate the sale of Roxane
5 drugs?

6 A. Correct.

7 Q. Oh, okay. All right. I'm going to --
8 do you recall attending a year 2000 palliative
9 care sales meeting in Phoenix, Arizona?

10 A. I don't recall attending it, but I know
11 I was there.

12 Q. How do you know that?

13 A. Because I saw some documents yesterday.
14 (Exhibit Sykora 012 was marked for
15 identification.)

16 BY MR. ANDERSON:

17 Q. I got you. Mr. Sykora, take a moment
18 and review what's been marked as Exhibit 012. Do
19 you agree this appears to be a cover letter sent
20 out by Mark Shaffer and then an agenda or a
21 schedule for a meeting of the palliative care
22 sales group?

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1 A. That is correct.

2 Q. And you are -- the meeting's noted to
3 take place Monday, September 18th, through
4 Thursday, September 21st, correct?

5 A. Yes.

6 Q. And you are noted as being a person
7 who's going to make some presentations, correct?

8 A. That's correct.

9 Q. For instance, you're shown on the
10 second page as presenting a presentation on
11 distribution to all attendees, correct?

12 A. That's correct.

13 Q. And then on the second page -- I mean,
14 pardon me, third page of the Exhibit 012, you're
15 shown also as presenting a distribution workshop
16 to two different groups of people attending the
17 sales meeting?

18 A. That's correct.

19 Q. Then if you look at the back of this
20 document, the second to last page, Mr. Sykora,
21 you see a group A and a group B listing of
22 individuals?

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1 A. I do.

2 Q. Is that the listing of sales
3 representatives that you presented these two
4 presentations to?

5 A. To tell you the truth, I don't
6 remember, but that's probably a pretty good
7 guess.

8 Q. It stands to reason, given that they're
9 identified as group A and B, and then over here
10 where you're shown as presenting the workshop on
11 distribution, there's two groups listed, A and B,
12 correct?

13 A. Correct.

14 Q. And I've been to the Biltmore. That's
15 a pretty nice place, isn't it?

16 A. You know, I don't remember it too much,
17 but --

18 Q. You don't remember going to the
19 Biltmore?

20 A. No, but we have a Biltmore in North
21 Carolina just not too far and it's pretty nice up
22 there.